

REMARKS

This Response is in reply to the Office Action mailed March 5, 2009. Claims 1 and 3-61 were pending in the application. Claims 1, 3-19, and 42-45 were allowed. Claims 22-24, 26, 28, 30, 33-36, and 39-41 were objected to. Claims 20, 21, 25, 27, 29, 31, 32, 37 and 38 were rejected. Claims 47-61 were withdrawn from consideration.

Claims 20, 25, 27, 29 and 31 were rejected under 35 USC 102(a) as being anticipated by FR 2,817,463 (hereinafter Conchy).

Claim 20 has been amended to now include the subject matter of objected to claim 24. For at least this reason, independent claim 20 is not anticipated by Conchy. Dependent claim 24 has been cancelled as a result of the amendment to independent claim 20.

Claim 25 has been amended to now include that each of the first and second members includes a discrete shape with a free distal end and a free proximal end that face in opposing directions. Conchy discloses circular elements each with a continuous shape. These elements do not include a discrete shape, and do not include free distal and proximal ends that face in opposing directions. For at least this reason, independent claim 25 and dependent claims 27, 29, and 31 are not anticipated by Conchy.

Claim 26 has been amended to now coincide with the amendments to independent claim 25.

Claims 20 and 21 were rejected under 35 USC 102(b) as being anticipated by US Patent No. 6,176,881 (hereinafter Schär). Claim 20 has been amended to now include the subject matter of objected to dependent claim 24. For at least these reasons, independent claim 20 and dependent claim 21 are not anticipated by Schär.

Claims 32, 37, 38, and 46 were rejected under 35 USC 103(a) as being unpatentable over Conchy in view of US Patent No. 4,878,915 (hereinafter Brantigan).

Claim 32 has been amended to now include that each of the first and second members includes an elongated non-continuous shape with opposing distal and proximal ends. Conchy discloses a number of stacked circular members. Conchy does not disclose or teach members with an elongated non-continuous shape, or members with opposing distal and proximal ends. Brantigan is cited in the Office Action as disclosing a delivery device. Even if Brantigan were to disclose this aspect, neither Brantigan nor Conchy, either alone or in combination, disclose the aspects now included in claim 32. For at least these reasons, independent claim 32 is not made obvious by these references.

Claim 37 has been amended to now include that the spacer includes a discrete length with opposing first and second ends. Neither reference, either alone or in combination, discloses a spacer with a first section with a first ramp and a second section with a second ramp with a spacer including a discrete length and opposing first and second ends. For at least these reasons, independent claim 37 and dependent claim 38 are not made obvious over these references.


Claim 46 has been amended to now include that each of the acting member, second member, and deploying member includes a discrete, non-continuous shape with opposing ends. Neither Conchy nor Brantigan, either alone or in combination, disclose or make obvious these aspects. For at least these reasons, independent claim 46 is not made obvious over this combination.

Claim 42 has been amended to now more accurately state the spacer further comprises apertures and that the elongated delivery device includes extensions that in a first configuration extend outward from the delivery device and mount within the apertures and in a second configuration are retracted inward and dismount from the apertures. This amendment is to clarify this aspect and is not done in view of any prior art.

Claim 44 has been amended to provide antecedent basis for the term "distal end". This amendment is not done in view of any prior art.

In view of the above amendments and remarks, the Applicant submits the present application is in condition for allowance, and such action is respectfully requested.

Respectfully submitted,
COATS & BENNETT, P.L.L.C.

A handwritten signature in dark ink, appearing to read "D. Kalish", is written over a horizontal line.

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